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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 81

G. SEALS AIKEN,
Petitioner

vs.

WILLIAM RICHARDSON,
Respondent

PETITION OF G. SEALS AIKEN FOR REHEARING OF ORDER DISMISSING HIS APPEAL "FOR WANT OF SUBSTANTIAL FEDERAL QUESTION."

PETITION FOR REHEARING.

G. SEALS AIKEN,
1106 First Nat'l Bank Bldg.
Atlanta, Ga.
In Propria Persona

Of Counsel:
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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now comes G. Seals Aiken, the petitioner above named, and prays that this court grant a rehearing of its order of October 13, 1952, dismissing his Appeal from the decision and judgment of the Court of Appeals of Georgia as modified on December 17, 1951 (Aiken v. Richardson, 85 Ga. App. 180, 68 S.E. 2d 228), and that said order be reversed and jurisdiction be noted of this cause for final hearing in accordance with the rules of this court as requested in his Appeal and Statement as to Jurisdiction.

This court dismissed petitioner's Appeal "for want of substantial federal question." Petitioner, therefore, directs

particular attention to the following material facts in the record and applicable and controlling decisions of this court showing that his Appeal does present substantial federal questions and brings the case clearly within the jurisdiction of this court and requires a reversal of the Court of Appeals of Georgia as a matter of absolute federal constitutional right.

Petitioner has been a member of the Bar of the State of Georgia since June 2, 1920, and of the Bar of the Supreme Court of the United States since November 25, 1935. His Appeal to this court is from a Penal and Contempt Rule Absolute entered against him as an attorney at law and officer of the court in this case by the Georgia Superior Court and affirmed by the Court of Appeals of Georgia adjudging him guilty of the serious and felonious crimes charged against him in the Penal and Contempt Rule instituted against him by said State Superior Court for alleged conversion of funds, solicitation of legal business, contempt of court, etc.

The Penal and Contempt Rule Absolute complained of in petitioner's Appeal was issued against him by the Georgia Superior Court for $2,189.38 and a penalty of twenty per cent interest per annum thereon from May 23, 1949, until paid, said penalty amounting at this time to approximately $1,500.00. PETITIONER WILL BE SUBJECTED TO BEING INCARCERATED IN JAIL AND DISBARRED unless he complies with said Penal and Contempt Rule Absolute by paying the above stated principal sum with said twenty per cent interest per annum from May 23, 1949.

All of the above consequences are the direct result of the action of the Georgia Superior Court in SUMMARILY

AND ILLEGALLY STRIKING THE SWORN ANSWER OF YOUR PETITIONER DENYING GUILT, AND IN ENTERING THE SAID PENAL AND CONTEMPT RULE ABSOLUTE WITHOUT ANY EVIDENCE IN SUPPORT THEREOF, WITHOUT ANY OPPORTUNITY TO PRESENT ANY EVIDENCE IN HIS OWN BEHALF, AND WITHOUT A TRIAL OF ANY KIND, THUS DENYING HIM THE DUE PROCESS OF LAW AND EQUAL PROTECTION OF LAW GUARANTEED BY SECTION I OF THE FOURTEENTH AMENDMENT OF THE U. S. CONSTITUTION, AS UNMISTAKABLY HELD BY THIS COURT IN THE CASES HEREINAFTER CITED.

It clearly appears from the record that your petitioner's sworn answer (R. 69, 82, 101) to the rule set up his contract of professional employment, denied in toto the charges made against him, and showed he had paid his client the exact amount due him under said contract ($1,591.33). The record shows the client returned petitioner's check for $1,591.33 with the demand that petitioner pay him $2,283.33 instead, and with threat of 20 per cent interest per annum penalty thereon, and a penal money, contempt, and disbarment proceeding if petitioner did not comply with said demand. Upon petitioner's refusal to comply with said arbitrary and lawless demand, the client carried out his threat by filing with the State Superior Court a motion for said penal proceeding against petitioner and charged him, as the basis therefor, with a number of serious criminal offenses set forth therein. THE SUPERIOR COURT THEREUPON ISSUED A PENAL RULE AGAINST PETITIONER, STRUCK HIS ANSWER DENYING THE CHARGES, AND ENTERED A PENAL AND CONTEMPT RULE ABSOLUTE AGAINST PETITIONER

WITHOUT ANY EVIDENCE OR TRIAL AS AFORESAID.

As a matter of record, Judge Townsend, in his special concurrence in the decision of the Court of Appeals of Georgia, called attention to the attacks levied against the professional integrity of your petitioner in the Penal Rule, and stated that, in justice to your petitioner, he, Judge Townsend, desired to make it clear that said attacks made upon the character of your petitioner were unwarranted.

The record further shows the client filed a traverse (R. 90) of your petitioner's answer, thereby raising many issues of fact, which, under the law and Constitution of Georgia, *must be determined by a jury upon submission of evidence.* Georgia Code Section 24-210. The striking of petitioner's answer and entering a Penal Rule Absolute against him without a jury trial and without any evidence, AFTER HIS ANSWER WAS TRAVERSED, also deprived him of due process of law and equal protection of law in violation of Section 1 of the Fourteenth Amendment of the U. S. Constitution and presents a substantial federal question for review by this court by certiorari as provided in U.S.C.A. Title 28, Section 1257(3) and Section 2103. The latter section provides that, "If an appeal to the Supreme Court is improvidently taken from the decision of the highest court of a State in a case where the proper mode of a review is by petition for certiorari, this alone shall not be ground for dismissal; but the papers whereon the appeal was taken shall be regarded and acted on as a petition for writ of certiorari and as if duly presented to the Supreme Court at the time the appeal was taken."

Petitioner's Appeal from the above described action of the Georgia courts shows beyond doubt that it presents

EXACTLY THE SAME SUBSTANTIAL FEDERAL QUESTIONS PRESENTED BY *HOVEY* V. *ELLIOTT*, 167 U.S. 409, A PENAL CONTEMPT AND MONEY RULE CASE, in which it was held:

> **"1 . . . it is a DENIAL OF DUE PROCESS OF LAW TO STRIKE OUT AN ANSWER, AND RENDER A DECREE PRO CONFESSO AS A PUNISHMENT FOR CONTEMPT."**
>
> **2. A judgment pro confesso against a defendant whose answer has been stricken out under the assumed power to thus punish for contempt is void for want of jurisdiction, and may be collaterally attacked."**

Petitioner's Appeal shows that he was deprived of the same substantial federal constitutional rights, privileges, and immunities as the complainants in *Hovey* v. *Elliott*, supra, and *Texas* v. *White*, 10 Wall. 483, Penal Contempt and Money Rule Proceedings, and *In Re: Oliver*, 333 U.S. 257, a Penal Contempt proceeding.

Furthermore, the Georgia statutes under which the said Penal and Contempt Rule Absolute was issued, and which were questioned by petitioner as repugnant to the U. S. Constitution, created a presumption that is arbitrary and that operates to deny a fair opportunity to repel it and violates the due process clause of the Fourteenth Amendment as shown by the case of *Manley* v. *State of Georgia*, 279 U.S. 1, a criminal case involving a Georgia banking statute, and *Western and A. R. R.* v. *Henderson*, 279 U.S. 639, a civil case involving a Georgia presumption statute against railroads.

The U. S. Supreme Court has held in *Norris* v. *State of Alabama*, 295 U.S. 587, 55 S.Ct. 579, that even though a

state statute may be fair on its face, the Fourteenth Amendment affords protection against action of a state through its courts in so construing and applying such a statute as to deprive a person of due process of law or of equal protection of the law.

The decision of this Court of October 13, 1952, dismissing petitioner's Appeal "for want of substantial federal question," therefore, was undoubtedly rendered through inadvertence and must be reversed as further shown by the following language from the decision *In Re: Oliver*, supra,

> "It is 'the law of the land' that no man's life, liberty or property be forfeited as a punishment until there has been a charge fairly made and *fairly tried in a public tribunal.* See Chambers v. Florida, 309 U.S. 227, 60 S.Ct. 472. *The petitioner was convicted without that kind of trial.*"

Petitioner's Statement as to Jurisdiction, already filed in this court, shows the substantial federal questions relied upon in this case were raised immediately and properly by petitioner upon their occurrence; that timely and proper legal exceptions were made and urged by him to the adverse rulings thereon of each of the State courts involved; that said exceptions have been timely and properly preserved and insisted upon throughout all this litigation and are still urged and insisted upon; and cites the pages in the record in this court showing how, when, where, and in what manner the foregoing was done. It also shows the said substantial federal questions were raised, urged, insisted upon, and preserved in accordance with the procedure required by the rules and previous decisions of this Court.

Respectfully submitted,

BEN F. SWEET,
F. L. BREEN,
Of Counsel

G. SEALS AIKEN,
In Propria Persona

CERTIFICATE.

I, G. SEALS AIKEN, petitioner above named, do hereby certify that the foregoing petition is presented in good faith and not for the purpose of delay.

G. SEALS AIKEN